

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**August 12, 2003**

**IN RE:**

**PETITION FOR APPROVAL OF AMENDMENT  
TO INTERCONNECTION AGREEMENT BETWEEN  
BELLSOUTH TELECOMMUNICATIONS, INC.  
AND XO TENNESSEE, INC.**

**DOCKET NO.  
03-00361**

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**ORDER APPROVING  
ELEVENTH AMENDMENT TO INTERCONNECTION AGREEMENT**

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This matter came before Chairman Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 21, 2003, to consider, pursuant to 47 U.S.C. § 252, the Petition for approval of the eleventh amendment to the interconnection agreement negotiated between BellSouth Telecommunications, Inc. and XO Tennessee, Inc.

The original interconnection agreement between these parties was filed on November 5, 1999, in Docket No. 98-00123. At a regularly scheduled Authority Conference on March 28, 2000, the Directors<sup>1</sup> of the Authority conditionally approved the agreement, as modified.<sup>2</sup> On

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<sup>1</sup> The terms of the former Directors of the Authority, Chairman Sara Kyle, Director H. Lynn Greer, Jr., and Director Melvin J. Malone, expired on June 30, 2002. Chairman Sara Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Director Deborah Taylor Tate, Director Pat Miller, and Director Ron Jones began terms as Directors on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Tate, Director Kyle, and Director Jones was randomly selected and assigned to this docket.

<sup>2</sup> See *In re: Petition of NextLink Tennessee L.L.C. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc.*, TRA Docket No. 98-00123, *Order Denying BellSouth's Motion to Reject Certain Provisions of the Interconnection Agreement and Approving Interconnection Agreement, as Amended*, pp. 11-12 (August 29, 2000). During the course of the proceedings described herein, NEXTLINK Tennessee, Inc. changed its name to XO Tennessee, Inc.

January 30, 2001, after reaching a settlement in a related federal court case and in response to a data request from the Authority, the first amendment to the agreement was filed in Docket No. 98-00123 in accordance with the Authority's August 29, 2000 Order. The first amendment was approved at a regularly scheduled Authority Conference on February 21, 2001. The second set of amendments was filed on December 8, 2000, under Docket No. 00-01082 and was approved at a regularly scheduled Authority Conference on March 6, 2001. The third set of amendments was filed on April 16, 2001, under Docket No. 01-00336 and was approved at a regularly scheduled Authority Conference on June 26, 2001. The fourth amendment was filed on June 1, 2001, under Docket No. 01-00477. At a regularly scheduled Authority Conference on August 7, 2001, a majority<sup>3</sup> of the Directors voted to take no action on the fourth amendment; therefore, by operation of 47 U.S.C. § 252(e)(4), the fourth amendment was deemed approved on August 30, 2001. The fifth set of amendments was filed on December 10, 2001, under Docket No. 01-01094 and was approved at a regularly scheduled Authority Conference on February 5, 2002. The sixth set of amendments was filed on April 2, 2002, under Docket No. 02-00342 and was approved at a regularly scheduled Authority Conference on May 21, 2002. The seventh amendment was filed on June 10, 2002, under Docket No. 02-00692 and was approved at a regularly scheduled Authority Conference on August 5, 2002. The eighth amendment was filed on July 31, 2002, under Docket No. 02-00833 and was approved at a regularly scheduled Authority Conference on September 9, 2002. The ninth amendment was filed on February 4, 2003, under Docket No. 03-00099, and was approved at a regularly scheduled Authority Conference on April 7, 2003. The tenth set of amendments was filed on April 10, 2003, under Docket 03-00274, and was approved at a regularly scheduled Authority Conference on July 7, 2003. The eleventh amendment, which is the subject of this docket, was filed on May 21, 2003.

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<sup>3</sup> Former Chairman Kyle did not vote with the majority. Instead, she voted in favor of approval.

Based upon a review of the eleventh amendment, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously granted the Petition and made the following findings and conclusions:

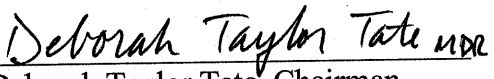
- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104.
- 2) The amendment is in the public interest as it provides consumers with alternative sources of telecommunications services within the BellSouth Telecommunications, Inc. service area.
- 3) The amendment is not discriminatory to telecommunications service providers that are not parties thereto.
- 4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).<sup>4</sup> Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the amendment is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.
- 5) No person or entity has sought to intervene in this docket.
- 6) The amendment is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104.

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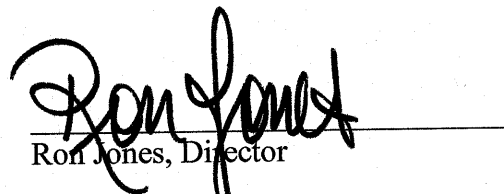
<sup>4</sup> See 47 U.S.C. § 252(e)(2)(B).

**IT IS THEREFORE ORDERED THAT:**

The Petition is granted, and the eleventh amendment to the interconnection agreement between BellSouth Telecommunications, Inc. and XO Tennessee, Inc. is approved and is subject to the review of the Authority as provided herein.

  
Deborah Taylor Tate, Chairman

  
Sara Kyle, Director

  
Ron Jones, Director